

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:

WILLIAMS WORLDWIDE
SHIPPING & TRADING, INC.,

Debtor.

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Chapter 11

Case No. 18-45676 (CEC)

**DECLARATION OF JOSEPH J. CHERICO IN SUPPORT OF
MOTION OF WELLS FARGO BANK, NATIONAL ASSOCIATION, FOR
RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. §362(d)**

I, Joseph J. Cherico, declare as follows:

1. I am a member of the Bar of this Court and a member of the law firm of McCarter & English, LLP, counsel for Creditor Wells Fargo Bank, National Association (“Wells Fargo”). I respectfully submit this Declaration in support of Wells Fargo’s motion for relief from the automatic stay to proceed with the foreclosure action, captioned *Wells Fargo Bank, National Association, v. William’s Worldwide Shipping & Trading, Inc., et al.*, pending in the Supreme Court of New York, County of Kings (Index No. 506108/2016) (the “Foreclosure Action”), which action was commenced prepetition against Williams Worldwide Shipping & Trading, Inc. (the “Debtor”) (and other defendants) to foreclose a mortgage on the commercial property located at 1177 Utica Avenue, Brooklyn, New York 11203 (the “Mortgaged Property”) and in which a Final Judgment of Foreclosure and Sale and for Related Relief (the “Foreclosure Judgment”) was already entered by the Court.

The Prior Bankruptcy Case

2. This is the second Chapter 11 bankruptcy case filed by the Debtor while the Foreclosure Action has been pending. The Debtor's first Chapter 11 bankruptcy case was filed in this Court on February 21, 2017 and assigned Case No. 17-40762 (the "First Bankruptcy Case").

3. On March 20, 2017, Wells Fargo filed a motion for relief from the automatic stay (Doc. #11) in the First Bankruptcy Case.

4. On May 22, 2017, this Court entered an Order (Doc. #25) in the First Bankruptcy Case granting Wells Fargo relief from the automatic stay to pursue its rights with respect to the Mortgaged Property.

5. Almost immediately after the Order granting Wells Fargo relief from the automatic stay was entered, the Debtor essentially abandoned the First Bankruptcy Case. Among other things, the Debtor stopped submitting monthly operating reports to the Court and failed to propose a plan for reorganization.

6. As a result, on September 15, 2017, the U.S. Trustee filed a Motion to Dismiss (Doc. #33) in the First Bankruptcy Case, noting that "the Debtor has proven that it is unable or unwilling to properly conduct itself as a debtor-in-possession. The Debtor has failed to provide proof of insurance renewal and failed to file monthly operating reports. Also, there are continuing losses to the estate in this case and, as the Debtor does not appear to be able to propose a confirmable plan, there is no likelihood of rehabilitation." First Bankruptcy Case, Doc. #33-1 at 1.

7. The Debtor did not file any opposition to the Motion to Dismiss nor did the Debtor take any action to pursue the First Bankruptcy Case.

8. On October 11, 2017, this Court held a hearing on the Motion to Dismiss in the First Bankruptcy Case.

9. On October 19, 2017, this Court entered an Order (Doc. #35) dismissing the First Bankruptcy Case.

The Foreclosure Action

10. On April 18, 2016, Wells Fargo commenced the Foreclosure Action naming the Debtor, among others, as a defendant and seeking, among other things, to foreclose on the Mortgaged Property.

11. On May 18, 2016, the Debtor filed an Answer and Affirmative Defenses in the Foreclosure Action.

12. On July 18, 2016, Wells Fargo filed a Motion for Summary Judgment, Appointment of Referee and Related Relief (the “Motion for Summary Judgment”) in the Foreclosure Action.

13. On September 21, 2016, the Debtor filed an Opposition to the Motion for Summary Judgment in the Foreclosure Action.

14. On September 26, 2016, Wells Fargo filed a Reply in further support of its Motion for Summary Judgment in the Foreclosure Action.

15. On September 27, 2016, the parties appeared before the Court for oral argument on Wells Fargo’s Motion for Summary Judgment in the Foreclosure Action. At the Debtor’s request, the Court adjourned oral argument of the Motion for Summary Judgment in order to allow the Debtor additional time to attempt to reinstate the subject loan.

16. On October 18, 2016, the parties again appeared before the Court for oral argument on Wells Fargo’s Motion for Summary Judgment in the Foreclosure Action. The

Debtor requested yet another adjournment for additional time to attempt to reinstate the subject loan. The Court, however, denied this request.

17. The Court in the Foreclosure Action then heard oral argument on the Motion for Summary Judgment and the motion was fully submitted at that time.

18. The Court in the Foreclosure Action stated that a written decision in favor of Wells Fargo on the Motion for Summary Judgment could be expected after January 1, 2017.

19. On February 28, 2017, while Wells Fargo's Motion for Summary Judgment was still pending a written decision from the Court in the Foreclosure Action, the Debtor's attorney in the Foreclosure Action notified the Court in writing of the Debtor's filing of the First Bankruptcy Case.

20. After this Court entered its Order granting Wells Fargo relief from the stay in the First Bankruptcy Case on May 22, 2017, Wells Fargo promptly continued to pursue the Foreclosure Action.

21. On May 24, 2017, Wells Fargo filed with the Court in the Foreclosure Action a Notice of Entry of this Court's Order granting Wells Fargo relief from the automatic stay.

22. On September 28, 2017, the Court in the Foreclosure Action entered an Order of Reference by which the court granted Wells Fargo's Motion for Summary Judgment, which included a finding that Wells Fargo is the owner and holder of the Loan Documents and is entitled to enforce the Loan Documents, and the Court appointed a Referee to compute the amount owed by the Debtor to Wells Fargo.

23. On January 11, 2018, the Referee in the Foreclosure Action executed a Report of Amount Due.

24. On March 12, 2018, Wells Fargo filed a Motion for Entry of Final Judgment of Foreclosure and Sale and Related Relief (the “Motion for Judgment”) in the Foreclosure Action.

25. On July 4, 2018, the Debtor filed an Opposition to Wells Fargo’s Motion for Judgment and the Debtor filed a Cross-Motion seeking to vacate the prior Order granting summary judgment in favor of Wells Fargo.

26. On July 6, 2018, Wells Fargo filed its Reply in further support of its Motion for Judgment and in opposition to the Cross-Motion.

27. On July 10, 2018, Wells Fargo and the Debtor appeared before the Court in the Foreclosure Action for a hearing on the Motion for Judgment and the Cross-Motion. At that hearing, the Court in the Foreclosure Action stated that the Debtor’s Cross-Motion was denied and that the Motion for Judgment was submitted.

28. On July 24, 2018, the Court in the Foreclosure Action entered the Order denying the Cross-Motion.

29. On August 24, 2018, the Court in the Foreclosure Action entered the Foreclosure Judgment by which the Court granted the Motion for Judgment.

30. Pursuant to the Foreclosure Judgment, a foreclosure sale of the Mortgaged Property was scheduled with the Referee for November 8, 2018.

31. Wells Fargo then made numerous requests of the Debtor for access to the Mortgaged Property so that Wells Fargo could conduct an updated appraisal and environmental inspection of the Mortgaged Property. The Debtor refused to allow Wells Fargo to have access to the Mortgaged Property.

32. As a result, on September 11, 2018, Wells Fargo filed a Motion for Access to the Mortgaged Property by Order to Show Cause in the Foreclosure Action.

33. On September 14, 2018, the Court in the Foreclosure Action signed the Order to Show Cause and directed the parties to appear for a hearing on the Motion for Access on October 2, 2018 at 9:30 a.m.

34. The Debtor failed to file any opposition to the Motion for Access. Instead, when the parties appeared for the hearing in the Foreclosure Action on October 2, 2018, the Debtor advised Wells Fargo and the Court that the Debtor had filed this bankruptcy case on the afternoon of October 1, 2018.

Wells Fargo's Claim

35. Attached hereto as Exhibit A is a true and correct copy of the Foreclosure Judgment entered by the Court in the Foreclosure Action.

36. As of October 1, 2018 (the date the bankruptcy petition was filed in this case), pursuant to the Foreclosure Judgment, the Debtor owed Wells Fargo the amount of at least \$938,086.17, itemized as follows:

Judgment debt	\$883,171.00
Pre-judgment interest at the rate of 6% under the Loan Documents (Nov. 6, 2017 – Aug. 24, 2018 = 292 days x \$145.178794521 per diem)	\$42,392.21
Post-judgment interest at the rate of 9% under CPLR § 5004 (Aug. 25, 2018 – Oct. 1, 2018 = 39 days x \$217.768191781 per diem)	\$8,492.96
Court costs	\$1,530.00
Attorneys' fees	\$2,500.00
Total Due as per the Foreclosure Judgment as of Oct. 1, 2018	\$938,086.17

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31st day of October, 2018.

28436430.1

s/ Joseph J. Cherico
Joseph J. Cherico